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House Budget Hawks Attack TEA 21 Firewalls *Rules Committee Hearing Opens Debate on Special Status*

As if to demonstrate that the price of equity, like that of liberty, is eternal vigilance, House budget hawks made it clear last week that they would support efforts to tear down the new budgetary "firewalls" in the Transportation Equity Act for the 21st Century (TEA 21).

At a House Rules Committee hearing called by Chairman **David Dreier** (R-CA), Congressmen **David Obey** (D-WI) and **John Spratt** (D-SC) criticized TEA 21's special budgetary treatment as unjustified and harmful to the budget process. (Obey is ranking Democrat on the House Appropriations Committee; Spratt is ranking Democrat on the House Budget Committee.) "It's more important to protect the integrity of the budget process than the [transportation] trust funds," Obey said.

Discussions before the Rules Committee centered on a key element of TEA 21's "guaranteed spending" mechanism: a provision creating a special point of order to enforce "firewalled" spending. Rules committee members expressed concern that the point of order would prevent amendments that would cut highway project funding or otherwise change spending levels in TEA 21 programs.

Those concerns have become more urgent because pending legislation to reauthorize the Federal Aviation Administration (FAA) could emerge from Conference Committee with similar provisions. The House Transportation and Infrastructure (T&I) Committee's proposed FAA bill, the Aviation Investment and Reform Act for the 21st Century (AIR 21), would take the Aviation Trust Fund off-budget and link FAA funding to aviation excise taxes. Over protests from

members of the Appropriations, Budget, and Rules committees, the House passed AIR 21 overwhelmingly last month.

T&I Chairman **Bud Shuster** (R-PA) and Congressman **James Oberstar** (D-MN), the ranking Democrat on Shuster's committee, strongly defended the TEA 21 firewalls. Shuster described TEA 21's budgetary mechanisms as the result of three years of work and as representing a compromise with many GOP leaders. He said the firewalls were created as a device to reserve outlays for the highway and transit programs while continuing to allow spending for those programs to be "scored" as discretionary spending in the arcane congressional budgetary processes. The firewalls, Shuster said, are a significant departure from the T&I Committee's original proposal to take the Highway Trust Fund off-budget.

The fate of the TEA 21 firewalls is vitally important to Texas and many other donor states that fought to increase the fairness of federal-aid highway program funding. The state's rate of return in highway funding is tied to the principle that federal highway program funding will increase or decrease as motor fuels tax revenues increase or decrease. Without the firewalls, Texas may see the hard-won improvements in our share of highway funding decline as appropriators whittle away at the annual funding levels for highways and transit program.

Dreier gave few specifics on any action the Rules Committee might take to alter TEA 21's firewalls or its point of order mechanism, but told Shuster that the Rules Committee will be "an active participant in any negotiations on AIR 21."

Senate Effort to Reinstate SIB Authority At Risk *Bill Sponsors Fear Loss of Other Provisions Over Labor Concerns*

Prospects for reinstating Texas' authority to use federal highway and transit program funds for its State Infrastructure Bank (SIB) appear to be dimming as the Senate perceives little support and much opposition to

expanding the current SIB program without changes to the program's labor provisions.

Background. Texas originally held authority to create and operate a SIB under the National Highway

System Designation Act of 1995 (NHS Act). Under that act, states could use a portion of their federal-aid highway and transit program apportionments each year for funding their SIBs. The 75th Legislature created the Texas SIB in 1997, giving the Texas Transportation Commission a very useful financing tool to provide loans for major projects that might not be funded through the regular statewide competitive process. The federal funding authority lapsed when the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) expired in September 1997.

Due to major debate over the program's labor provisions (discussed below), the Transportation Equity Act for the 21st Century (TEA 21), the successor to ISTEA, included SIB funding authority for only four states. Although many states besides Texas have taken the steps necessary to establish SIBs, these states are now limited to using state funds for their SIBs or any remaining federal funds apportioned to the state prior to the beginning of FY 1998.

106th Congress Efforts. Senator **George Voinovich** (R-OH), who chairs the Transportation and Infrastructure Subcommittee of the Senate's Environment and Public Works Committee (EPW), recently introduced S. 1144, the Surface Transportation Act of 1999. Joining Voinovich as original co-sponsors of the bill, S. 1144, were EPW chairman **John Chafee** (R-RI) and committee members **John Warner** (R-VA), **Kay Bailey Hutchison** (R-TX), **Daniel Patrick Moynihan** (D-NY), **Frank Lautenberg** (D-NJ), as well as Senators **James Jeffords** (R-VT) and **Patrick Leahy** (D-VT). Subsequent cosponsors include: Senators **Joseph Lieberman** (D-CN), **Frank Murkowski** (R-AK), **Max Cleland** (D-GA), **Charles Robb** (D-VA), **Richard Durbin** (D-IL), **Olympia Snowe** (R-ME),

Susan Collins (R-ME), and **Mike DeWine** (R-OH).

S. 1144 would reinstate the SIB Program created in the NHS Act; give states flexibility in funding Congressional High Priority projects; and allow states more flexibility in using their federal-aid highway apportionments and transit funds, including for intercity rail. Reinstatement of the NHS SIB program would allow Texas to use TEA 21 funds to capitalize our SIB.

Labor Provisions Hamper S. 1144. Under the NHS SIB program, federal requirements (including the prevailing wage provisions of the Davis-Bacon Act) would only apply to the first use of federal funds placed in the SIB. Labor interests perceive limiting Davis-Bacon and other federal requirements to "first use" as "anti-labor."

Chafee sees labor's opposition to the SIB provision as threatening the other portions of S. 1144 to which Chafee is strongly committed. Rhode Island is one of the four states (including California, Florida, and Missouri) allowed under TEA 21's SIB pilot program to use federal funds to capitalize their SIBs, so Chafee has little personal or political justification for withstanding labor's opposition. Few cosponsors of S. 1144 have signed on because of the SIB reinstatement provision.

Despite the loss of federal funding ability for their SIBs, EPW staff tells TxDOT that those states that have created SIBs and could participate under the NHS SIB program are not letting their Senators know that reinstatement of the NHS SIB is important. In the face of labor's onslaught, Voinovich, Chafee, and other cosponsors, particularly Democrats, are considering whether to cut the SIB provision from the bill. Senators **Harry Reid** (D-NV) and **Charles Schumer** (D-NY), who had previously signed on to the bill, have withdrawn their support.

